

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

November 6, 1996

UNITED STATES OF AMERICA)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No: 96A00055
)	
STEFANO NOTTOLINI d/b/a)	
CUTTERS LANDSCAPING, INC.)	
Respondent.)	

DECISION AND ORDER

This action was initiated by the United States Department of Justice, Immigration and Naturalization Service (INS) which filed a complaint in one count with the Office of the Chief Administrative Hearing Officer (OCAHO) alleging that Stefano Nottolini, doing business as Cutters Landscaping, Inc., knowingly continued to employ five aliens not authorized for employment in the United States, all of whom he hired after November 6, 1986. Complainant filed a motion for default judgment on August 12, 1996 asserting that respondent failed to timely plead or otherwise respond to the charges lodged against him, as required by the Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. § 68.9(a) (1995). On August 14, 1996, I issued an Order to Show Cause Why Judgment by Default Should Not Issue in view of respondent's failure to answer the complaint within the required timeframe. Respondent, proceeding pro se, asserted by a letter filed on September 6, 1996 that he did not wish a default judgment to issue in this matter, that he was unable to pay the fine requested by complainant, and that his business was in complete compliance with immigration laws. Pursuant to a telephonic prehearing conference on October 10, 1996, during which respondent admitted the allegations in the complaint with respect to two individuals, I entered a partial judgment by default by order dated October 11, 1996. Also in that order, I directed complainant to submit by October 31, 1996 its documentary evidence supporting the charges it lodged against respondent concerning the remaining three individuals. Respondent was given 10 days thereafter to file any countersubmissions. Both parties were also ordered to file written memoranda by October 31, 1996 addressing the statutory factors which I am required to consider in setting penalties.

On October 28, 1996, in lieu of the submissions detailed in the October 11, 1996 order, the parties filed a joint motion to approve consent findings pursuant to 28 C.F.R. § 68.14(a)(2). In this motion, the parties request approval of their consent findings in accordance with 28 C.F.R. § 68.14(b)(1) - (4), which provides:

Any agreement containing consent findings and a proposed decision and order disposing of a proceeding or any part thereof shall also provide:

- (1) That the decision and order based on consent findings shall have the same force and effect as a decision and order made after a full hearing;
- (2) That the entire record on which any decision and order may be based shall consist solely of the complaint, notice of hearing, and any other such pleadings and documents as the Administrative Law Judge shall specify;
- (3) A waiver of any further procedural steps before the Administrative Law Judge; and
- (4) A waiver of any right to challenge or contest the validity of the decision and order entered into in accordance with the agreement.

I have reviewed the submission as provided in 28 C.F.R. 68.14(c) and find that it is generally acceptable in timeliness, form, and substance. In accordance with 28 C.F.R. § 68.14(b)(2), I find that the record consists of the complaint, the notice of hearing, the joint motion to approve consent findings, the settlement agreement, and the decision and order of consent findings. I approve and adopt as submitted the settlement agreement containing consent findings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) The document entitled settlement agreement attached to the joint motion to approve consent findings submitted by the parties, including the admissions of fact contained therein, is adopted and made a part of this Decision and Order, according to its terms as if fully set out herein.

(2) The parties have agreed that respondent admits the allegations set forth in the complaint thereby conceding violations of §274A(a)(2) of the Immigration and Nationality Act (hereinafter the “Act”), 8 U.S.C. § 1324a(a)(2) with regard to the employment of the individuals referred to in the complaint.

(3) On the basis of the consent findings, I find and conclude that respondent has violated § 274(a)(2) of the Act, 8 U.S.C. § 1324a(a)(2) with regard to the employment of the individuals referred to in the complaint.

ACCORDINGLY, IT IS HEREBY ORDERED:

- (1) that the joint motion to approve consent findings is granted;
- (2) that respondent pay a civil monetary penalty of three thousand dollars (\$3000.00);
- (3) that each party bear its own attorney fees, costs, and other expenses incurred by that party in connection with these proceedings;
- (4) that this Decision and Order has the same force and effect as a Decision and Order made after a full administrative hearing;
- (5) that the entire record on which this Decision and Order is based consists solely of the complaint, the notice of hearing, the joint motion to approve consent findings, the settlement agreement, and the decision and order of consent findings;
- (6) that the parties have waived any further procedural steps before the Administrative Law Judge;
- (7) that this Decision and Order is final and unappealable and that the parties have waived any and all right to challenge or contest the validity of this Decision and Order in any forum; and
- (8) that there shall be no hearing in this case.

SO ORDERED

Dated and entered this 6th day of November, 1996.

Ellen K. Thomas
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 1996, I have served copies of the foregoing Decision and Order to the following persons at the addresses indicated:

Dea Carpenter, Esquire
Associate General Counsel
Immigration and Naturalization Service
425 "I" Street, N.W., Room 6100
Washington, D.C. 20536

Jennie L. Giambastiani, Esquire
Assistant District Counsel
Immigration and Naturalization Service
10 W. Jackson Boulevard., #610
Chicago, IL 60604

Stefano Nottolini
Cutters Landscaping, Inc.
6338 West Fitch Street
Chicago, IL 60646-9999

Office of the Chief Administrative Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, Virginia 22041

Cynthia A. Castañeda
Legal Technician to
Ellen K. Thomas
Administrative Law Judge
Office of the Chief Administrative
Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, Virginia 22041